

House File 279 - Introduced

HOUSE FILE 279

BY RIZER and STAED

A BILL FOR

1 An Act relating to the regulation of synthetic substances and
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 124E.1 Synthetic substances —
2 regulation — civil penalties.

3 1. The following factors, taken in the totality of the
4 circumstances, may be considered in determining whether a
5 product should be classified as a synthetic substance. For
6 the purposes of enforcement pursuant to this section, the
7 establishment of two or more factors shall constitute prima
8 facie evidence that the product is a synthetic substance.

9 a. Advertising a product for a purpose for which the product
10 is rarely, if ever, suitably used.

11 b. Displaying or selling a product in businesses such as
12 liquor stores, smoke shops, or gas or convenience stores where
13 such a product is not typically sold.

14 c. Marketing a product as a common nonconsumable product
15 with warning labels not normally found on such a product. The
16 warning labels may be similar but not limited to the following:

17 (1) Not for human consumption.

18 (2) Not for purchase by minors.

19 d. Labeling a product in a manner not normally found on
20 similar products including but not limited to the following:

21 (1) Does not contain any chemical compounds prohibited by
22 state law.

23 (2) Contains no prohibited chemicals.

24 (3) Product is in accordance with state and federal laws.

25 (4) Does not contain AM-2201 or any substance banned by the
26 United States drug enforcement administration.

27 (5) Legal herbal substance.

28 (6) One hundred percent compliant guaranteed.

29 (7) One hundred percent chemical free.

30 (8) One hundred percent synthetic free.

31 e. Labeling a product by suggesting that a user will achieve
32 a high, euphoria, relaxation, mood enhancement, or other
33 effects on the body.

34 f. Pricing a product as more expensive than other products
35 marketed in the area for the same or similar use.

1 *g.* Providing directions for a product that are not
2 consistent for the type of product advertised.

3 *h.* Designing a product to make the substance appear similar
4 to illicit street drugs.

5 *i.* Advertising a product using brand names and packaging
6 designed to make the product appear similar to illicit street
7 drugs, or labeling a product with names similar to commonly
8 used street slang for illicit drugs, which names or labeling
9 has no relation to the advertised use of the product being
10 sold.

11 *j.* Enhancing a product with a synthetic chemical or
12 synthetic chemical compound that has no legitimate relation to
13 the advertised use of the product but mimics the effects of a
14 controlled substance when the product, or the smoke from the
15 burned product, is introduced into the human body.

16 *k.* Making verbal or written representations at the place of
17 sale or display regarding the purpose, methods, use, or effect
18 of the product.

19 2. A retailer or person shall not sell, offer to sell,
20 give, or offer to give, or otherwise transfer a product labeled
21 as or represented to be a synthetic substance under this
22 section after the product has been determined to be a synthetic
23 substance under subsection 4.

24 3. A city or a county may enforce subsection 2 after
25 giving a retailer or person engaged in the business of selling
26 products in the city or county an opportunity to be heard upon
27 ten days' written notice by restricted certified mail stating
28 the alleged violation and the time and place for a hearing
29 where the retailer or person may appear and be heard.

30 4. If after notice has been provided under subsection
31 3, and a hearing where a determination has been made that
32 the product is a synthetic substance under subsection 1, the
33 retailer or a person who has received notice under subsection
34 3 shall be assessed a civil penalty as provided in subsection
35 5 if the retailer or person sells, offers to sell, gives or

1 offers to give, or otherwise transfers a product labeled as or
2 represented to be a synthetic substance.

3 5. a. For a first violation, the retailer or person shall
4 be assessed a civil penalty in the amount of two hundred
5 dollars.

6 b. For a second or subsequent violation, the retailer or
7 person shall be assessed a civil penalty in the amount of five
8 hundred dollars.

9 6. The civil penalty shall be collected by the clerk of the
10 district court and shall be distributed as provided in section
11 602.8105, subsection 4.

12 Sec. 2. Section 602.8105, subsection 4, Code 2015, is
13 amended to read as follows:

14 4. The clerk of the district court shall collect a civil
15 penalty assessed against a retailer or person pursuant to
16 section 124E.1 or against a retailer pursuant to section
17 126.23B. Any moneys collected from the civil penalty shall be
18 distributed to the city or county that brought the enforcement
19 action for a violation of section 124E.1 or 126.23A.

20 EXPLANATION

21 The inclusion of this explanation does not constitute agreement with
22 the explanation's substance by the members of the general assembly.

23 This bill relates to the regulation of synthetic substances.

24 A retailer or person shall not sell, offer to sell, give, or
25 offer to give, or otherwise transfer a product labeled as or
26 represented to be a synthetic substance under the bill. For
27 the purposes of enforcement, the establishment of two or more
28 of the following factors shall constitute prima facie evidence
29 that the product is a synthetic substance: advertising for
30 which it is rarely suitable to be used; marketing as common
31 nonconsumable products which contain warning labels not
32 normally found on such products; labeling not normally found
33 on similar products; labeling suggesting the user will achieve
34 a high, euphoria, or that the product has other effects on
35 the body; pricing which is more expensive than other products

1 marketed in the area for the same or similar use; directions
2 that are not consistent for the type of product advertised;
3 designing to make the substance appear similar to illicit
4 street drugs; advertising using brand names and packaging
5 designed to make the product appear similar to illicit street
6 drugs, or labeled with names similar to commonly used street
7 slang for illicit drugs; enhancing with a synthetic chemical
8 or synthetic chemical compound that has no legitimate relation
9 to the advertised use of the product; or verbal or written
10 representations made at the place of sale regarding the
11 purpose, methods, use, or effect of the product.

12 A city or a county may enforce the bill after giving a
13 retailer or person engaged in the business selling products
14 in the city or county an opportunity to be heard upon 10
15 days' written notice by restricted certified mail stating the
16 alleged violation and the time and place of a hearing where the
17 retailer or person may appear and be heard.

18 After a hearing where a determination has been made that the
19 product is a synthetic substance under the bill, a retailer
20 or a person, who has received notice of such a hearing,
21 shall be assessed a civil penalty, if the retailer or person
22 sells, offers to sell, gives, or offers to give, or otherwise
23 transfers a product labeled as or represented to be a synthetic
24 substance.

25 For a first violation of the bill, a retailer or person shall
26 be assessed a civil penalty in the amount of \$200.

27 For a second or subsequent violation of the bill, a retailer
28 or person shall be assessed a civil penalty in the amount of
29 \$500.

30 Any moneys collected from the civil penalty shall be
31 distributed to the city or county that brought the enforcement
32 action relating to the bill.